



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2021-0923; FRL-9882-01-R9]

#### **Air Plan Approval; California; Mojave Desert Air Quality Management District**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the Mojave Desert Air Quality Management District (MDAQMD or “District”) portion of the California State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO<sub>x</sub>) from Portland cement kilns. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Comments must be received on or before [Insert date 30 days after date of publication in the *Federal Register*].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2021-0923 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER**

**INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Elijah Gordon, EPA Region IX, 75

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**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to the EPA.

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### **I. The State’s Submittal**

- A. *What rule did the State submit?*

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1 - SUBMITTED RULE

Local Agency	Rule #	Rule Title	Amended	Submitted
MDAQMD	1161	Portland Cement Kilns	01/22/2018	05/23/2018

On November 23, 2018, pursuant to CAA section 110(k)(1)(B) and 40 CFR part 51, appendix V, the submittal for the MDAQMD Rule 1161 was deemed complete by operation of law.

*B. Are there other versions of this rule?*

We approved an earlier version of Rule 1161 into the SIP on February 27, 2003 (68 FR 9015). The MDAQMD adopted revisions to the SIP-approved version on January 22, 2018, and CARB submitted them to us on May 23, 2018. If we take final action to approve the January 22, 2018 version of Rule 1161, this version will replace the previously approved version of the rule in the SIP.

*C. What is the purpose of the rule revision?*

Emissions of NO<sub>x</sub> contribute to the production of ground-level ozone, smog and particulate matter (PM), which harm human health and the environment. Section 110(a) of the CAA requires states to submit plans that provide for implementation, maintenance, and enforcement of the National Ambient Air Quality Standards (NAAQS). SIP-approved Rule 1161 established NO<sub>x</sub> emission limits for Portland cement kilns within the District.

On November 17, 2017 (82 FR 54309), the EPA proposed to conditionally approve the MDAQMD's reasonably available control technology (RACT) demonstrations for the 1997 8-hour ozone NAAQS and the 2008 8-hour ozone NAAQS (referred to as the 2006 and 2015 RACT SIPs) based on deficiencies in several rules. One of the rules noted was Rule 1161, which

did not meet current RACT based on comparisons of NO<sub>x</sub> emission limits in ozone nonattainment areas located in other states deemed to meet or exceed RACT. The conditional approval, finalized on February 12, 2018 (83 FR 5921), was based on commitments from the MDAQMD to revise and submit amendments to Rule 1161 that would meet current RACT. Revisions to Rule 1161, submitted to the EPA on May 23, 2018, addressed this deficiency by establishing a more stringent NO<sub>x</sub> limit for Portland cement kilns. The EPA's technical support document (TSD) has more information about this rule.

## **II. The EPA's Evaluation and Action**

### *A. How is the EPA evaluating the rule?*

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, ozone nonattainment areas classified as Moderate or above (see CAA sections 182(b)(2) and 182(f)) are required to submit SIP revisions containing rules requiring RACT for each major source of NO<sub>x</sub>. The MDAQMD regulates an ozone nonattainment area classified as Severe-15 for the 2008 8-hr ozone NAAQS (40 CFR 81.305). Therefore, in order for the MDAQMD to fulfill the commitments in its 2006 and 2015 RACT SIP conditional approval commitment letter, this proposed rule must implement RACT.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation, and rule stringency requirements for the applicable criteria pollutant include the following:

1. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).

2. “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,” EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. “Guidance Document for Correcting Common VOC & Other Rule Deficiencies,” EPA Region 9, August 21, 2001 (the Little Bluebook).
4. “State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,” (the NO<sub>x</sub> Supplement), 57 FR 55620, November 25, 1992.
5. “NO<sub>x</sub> Emissions from Cement Manufacturing,” EPA-453/R-94-004, March 1994.
6. “NO<sub>x</sub> Control Technologies for the Cement Industry: Final Report,” EPA 457/R-00-002, September 2000.
7. The Texas Commission on Environmental Quality in Section 117.3110 – Cement Kilns, Emissions Specifications, May 23, 2007.
8. State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,” 80 FR 33839, June 12, 2015.
9. “Guidance Memorandum: Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy,” September 30, 2021.

B. *Does the rule meet the evaluation criteria?*

This proposed rule meets CAA requirements and is consistent with relevant guidance regarding enforceability, RACT, and SIP revisions. We find that the District has fulfilled the requirements in its commitment letter for the 2006 and 2015 RACT SIP conditional approval (83 FR 5921, February 12, 2018) to revise the rule by lowering the NO<sub>x</sub> emission limits for Portland cement kilns in order to meet current RACT. NO<sub>x</sub> emission limits during all periods not labeled Startup and Shutdown for Preheater-Precalciner Kilns are reduced from 6.4 to 2.8 pounds per ton

of clinker produced when averaged over any 30 consecutive day period, increasing the stringency of the rule. Additionally, provisions clearly laid out in Sections (F), (I), and (J) of the rule establish applicability criteria, monitoring, recordkeeping, and reporting that can be consistently evaluated to determine compliance. Startup and shutdown emissions limits (e.g., 17,616 pounds of NO<sub>x</sub> per day for Preheater-Precalciner Kilns manufactured by Allis Chalmers, whose construction was completed in 1982), duration time limits (i.e., 36 hours), and recordkeeping requirements are found in Rule 1161. These and other alternative emission limitations (AEL) provisions, consistent with our 2015 SSM Policy (80 FR 33839, June 12, 2015), are found in Sections (C) and (F). Finally, the retention of all produced and maintained on-site records increased from two years to five years, further enhancing the stringency of the rule. The TSD has more information on our evaluation.

*C. Public comment and proposed action*

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted proposed rule because it fulfills all relevant requirements. We will accept comments from the public on this proposal until **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. If we take final action to approve the submitted proposed rule, our final action will incorporate this rule into the federally enforceable SIP.

### **III. Incorporation by Reference**

In this proposed rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference MDAQMD Rule 1161, which regulates NO<sub>x</sub> emission limits for Portland cement kilns, as listed in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: July 10, 2022.

Martha Guzman Aceves,  
*Regional Administrator,*  
*Region IX.*

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